

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs April 18, 2002

CHARLES MONTAGUE v. CHIEF RON STREET, ET AL.

**Appeal from the Circuit Court for Washington County
No. 7868 Jean A. Stanley, Judge**

FILED JULY 12, 2002

No. E2001-02805-COA-R3-CV

This is a suit by Charles Montague, an inmate of the Penal System of this State, who was convicted of first degree murder and is presently serving a life sentence. The Defendants are Ron Street, Chief of Police of the City of Johnson City and Washington County.

**Tenn.R.App.P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed;
Cause Remanded**

HOUSTON M. GODDARD, P.J., delivered the opinion of the court, in which HERSCHEL P. FRANKS and CHARLES D. SUSANO, JR., JJ., joined.

Charles Montague, Mountain City, Tennessee, Appellant, *Pro Se*

John Rambo, Johnson City, Tennessee, for the Appellees, Chief of Police Ron Street, City of Johnson City, Washington County, TN

OPINION

The complaint is styled: "42 U.S.C. § Complaint." The body of the complaint identifies the U. S. Code Section as 42 U.S.C. 1983.

Mr. Montague's complaint seeks certain material principally as an aid to his post-conviction proceeding, and prays for the following relief:

RELIEF:

- 14). Wherefore, plaintiff requests that this court grant the following:
- a). Issue a Declaratory Judgement that all defendants are libel [sic] to plaintiff; and that they are not immune from suit in this case; and that they are to immediately release all material that the plaintiff has requested from them in the attached appendixs [sic] # A through F; and for a declaration that the plaintiff's Rights have been abridged by the defendant(s).
 - b). For a show cause order.
 - c). For an injunction to require that plaintiff and/or any other citizen be allowed to inspect/copy police files and Service records of Police Officers under similar circumstances.
 - d). Grant Compensatory Damages of \$10,000 Dollars against each defendant in this case.
 - e). Grant punitive damages of \$10,000 dollars against each defendant in this case.
 - f). Grant such other relief that the plaintiff is entitled too[sic].

Mr. Montague appeals, raising three issues:

ISSUES PRESENTED

1. Was the Trial Court correct in Dismissing plaintiff's Complaint with respect to defendants-Street, City of Johnson City, and Washington County, TN.? Plaintiff answer: NO.

2. Did the trial court ERROR, with respect to the issue of Discovery?

Plaintiff will answer: YES.

3. Did the trial Court error, when it did not rule upon plaintiff's Motion to Retax the Costs? Plaintiff will answer: Yes.

The Trial Judge dismissed Mr. Montague's complaint upon the Defendants' Rule 12 motion, asserting that the complaint does not state a cause of action. See Appendix.

Our reading of the record and the briefs of the parties persuades us as to the first two issues this is an appropriate case for affirmance under Rule 10 of this Court.

As to the third issue, it appears there is a motion pending below relative to costs which has not been acted upon. We first observe that the order appealed does not appear to be a final order. Nevertheless, in the interest of judicial economy, we deem it appropriate to treat this appeal as one under Rule 9 and waive all uncomplained-with requirements necessary for such an appeal.

We first observe that the motion is to reduce costs taxed against Mr. Montague rather than to re-tax them. We also note that the final judgment was rendered on November 1, 2001, a notice of appeal filed on November 7, 2001, and the motion regarding costs was not filed until December 21, 2001.

We conclude it was incumbent upon Mr. Montague to bring his motion to the Court's attention, and his failure to do so prior to filing a notice of appeal resulted in his waiving the relief sought by his motion.

The judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of appeal are adjudged against Mr. Montague.

HOUSTON M. GODDARD, PRESIDING JUDGE